

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

CRL.A.No. 710 of 1998

ST.609/1989 of JUDL. MAGISTRATE OF FIRST CLASS, ERATTUPETTA
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APPELLANT/COMPLAINANT:

SPECIAL OFFICER, ERATTUPETTA MUNICIPALITY,
ERATTUPETTA.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENT/ACCUSED:

V.M.MUHAMMED SHERIF, THALAPPALLIL,
ERATTUPETTA.

BY ADV. SRI.MATHEWS J.NEDUMPARA
SRI.VADAKARA V.V.N.MENON
SRI.S.JAMAL
SRI.SREEVALSAN.V

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. KOSHY, J.

Crl. Appeal No. 710 of 1998

Dated this the 17th day of January, 2007

Judgment

This appeal is filed against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure. The order passed on 17.1.1991 is as follows:

"Accused is absent. Applies. Allowed.
Complainant is absent. Applies. Rejected.
Complaint is dismissed and the accused is
acquitted u/s 256 (1) of Crl. P.C."

Even though Magistrate has got power to acquit an accused for the absence of the complainant, it shall not be automatic. In this case, on 17.1.1991, accused was also absent. Even if complainant was present, no evidence could have been taken from the complainant and presence of the complainant was not necessary especially when exemption was given for the appearance of the accused on that day. I am of the view that Magistrate was not correct in refusing exemption to the complainant on that day especially when accused was also absent.

In the above circumstances, the impugned order is set aside and the matter is remanded to the trial court without expressing any opinion regarding the merits

of the matter. Parties shall appear before the trial court on 5.3.2007.

The appeal is allowed by way of remand.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.710/98

Judgment

Dated:17th January, 2007